

No. 150. An act relating to standardized procedures for permits and approvals issued by the Department of Environmental Conservation.

(S.123)

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Environmental Conservation; Standard Procedures * * *

Sec. 1. 10 V.S.A. chapter 170 is added to read:

CHAPTER 170. DEPARTMENT OF ENVIRONMENTAL
CONSERVATION; STANDARD PROCEDURES

Subchapter 1. General Provisions

§ 7701. PURPOSE

The purpose of this chapter is to establish standard procedures for public notice, public meetings, and decisions relating to applications for permits issued by the Department of Environmental Conservation.

§ 7702. DEFINITIONS

As used in this chapter:

(1) “Adjoining property owner” means a person who owns land in fee simple, if that land:

(A) shares a property boundary with a tract of land where proposed or actual activity regulated by the Department is located; or

(B) is adjacent to a tract of land where such activity is located and the two properties are separated only by a river, stream, or public highway.

(2) “Administrative amendment” means an amendment to an individual permit, general permit, or notice of intent under a general permit that corrects

typographical errors, changes the name or mailing address of a permittee, or makes other similar changes to a permit that do not require technical review of the permitted activity or the imposition of new conditions or requirements.

(3) “Administrative record” means the application and any supporting data furnished by the applicant; all information submitted by the applicant during the course of reviewing the application; the draft permit or notice of intent to deny the application; the fact sheet and all documents cited in the fact sheet, if applicable; all comments received during the public comment period; the recording or transcript of any public meeting or meetings held; any written material submitted at a public meeting; the response to comments; the final permit; any document used as a basis for the final decision; and any other documents contained in the permit file.

(4) “Administratively complete application” means an application for a permit for which all initially required documentation has been submitted, and any required permit fee, and the information submitted initially addresses all application requirements but has not yet been subjected to a complete technical review.

(5) “Agency” means the Agency of Natural Resources.

(6) “Clean Air Act” means the federal statutes on air pollution prevention and control, 42 U.S.C. § 7401 et seq.

(7) “Clean Water Act” means the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.

(8) “Commissioner” means the Commissioner of Environmental Conservation or the Commissioner’s designee.

(9) “Department” means the Department of Environmental Conservation.

(10) “Document” means any written or recorded information, regardless of physical form or characteristics, which the Department produces or acquires in the course of reviewing an application for a permit.

(11) “Environmental notice bulletin” or “bulletin” means the website and e-mail notification system required by 3 V.S.A. § 2826.

(12) “Fact sheet” means a document that briefly sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing a draft decision.

(13) “General permit” means a permit that applies to a class or category of discharges, emissions, disposal, facilities, or activities within a common geographic area, including the entire State or a region of the State.

(14) “Individual permit” means a permit that authorizes a specific discharge, emission, disposal, facility, or activity that contains terms and conditions that are specific to the discharge, emission, disposal, facility, or activity.

(15) “Major amendment” means an amendment to an individual permit or notice of intent under a general permit that necessitates technical review.

(16) “Minor amendment” means an amendment to an individual permit or notice of intent under a general permit that requires a change in a condition or requirement, does not necessitate technical review, and is not an administrative amendment.

(17) “Notice of intent under a general permit” means an authorization issued by the Secretary to undertake an action authorized by a general permit.

(18) “Permit” includes any permit, certification, license, registration, determination, or similar form of permission required from the Department by law. However, the term excludes a professional license issued pursuant to chapter 48, subchapter 3 (licensing of well drillers) of this title and sections 1674 (water supply operators), 1936 (UST inspector licenses), 6607 (hazardous waste transporters), and 6607a (waste transportation) of this title.

(19) “Person” shall have the same meaning as under section 8502 of this title.

(20) “Person to whom notice is federally required” means a person to whom notice of an application or draft decision must be given under federal regulations adopted pursuant to the Clean Air Act or Clean Water Act.

(21) “Public meeting” means a meeting that is open to the public and recorded or transcribed, at which the Department shall provide basic information about the draft permit decision, an opportunity for questions to the applicant and the Department, and an opportunity for members of the public to submit oral and written comments.

(22) “Secretary” means the Secretary of Natural Resources or designee.

(23) “Technical review” means the application of scientific, engineering, or other professional expertise to the facts to determine whether activity for which a permit is requested meets the standards for issuing the permit under statute and rule.

§ 7703. RULES; ADDITIONAL NOTICE OR PROCEDURES

(a) Rules.

(1) Implementing rules. The Secretary may adopt rules to implement this chapter.

(2) Complex projects; preapplication process. The Secretary shall adopt rules to determine when a project requiring a permit is large and complex. These rules shall provide that an applicant proposing such a project, prior to filing an application for a permit, shall initiate a project scoping process pursuant to 3 V.S.A. § 2828 or shall hold an informational meeting that is open to the public. The rules shall ensure that:

(A) Written notice of an informational meeting under this section is sent to the owner of the land where the project is located if the applicant is not the owner; the municipality in which the project is located; the municipal and regional planning commissions for any municipality in which the project is located; if the project site is located on a boundary, any Vermont municipality adjacent to that boundary and the municipal and regional planning commissions for that municipality; and each adjoining property owner. At the

time this written notice is sent, the Secretary also shall post the notice to the environmental notice bulletin.

(B) The notice to adjoining property owners informs them of how they can continue to receive notices and information through the environmental notice bulletin concerning the project as it is reviewed by the Secretary.

(C) The applicant furnishes by affidavit to the Secretary the names of those furnished notice and certifies compliance with the notice requirements of this subsection.

(D) The applicant and the Secretary or designee shall attend the meeting. The applicant shall respond to questions from other attendees.

(b) Additional notice.

(1) The Secretary may require, by rule or in an individual case, measures in addition to those directed by this chapter using any method reasonably calculated to give direct notice to persons potentially affected by a decision on the application.

(2) In an individual case, the Secretary may determine to apply the procedures of section 7713 (Type 2) of this chapter to the issuance of a permit otherwise subject to the procedures of section 7715 (Type 4) or section 7716 (Type 5) of this chapter.

(c) Extension of deadlines. A person may request that the Secretary extend any deadline for comment or requesting a public informational meeting

established by this chapter. The person shall submit the request before the deadline and include a brief explanation of why the extension is justified. If the request is granted, the Secretary shall provide notice of the new deadline through the environmental notice bulletin.

§ 7704. ADMINISTRATIVE RECORD

(a) The Secretary shall create an administrative record for each application for a permit and shall make the administrative record available to the public.

(b) The Secretary shall base a draft or final decision on each application for a permit on the administrative record.

(c) With respect to permits issued under the Clean Air Act and Clean Water Act, the Secretary shall comply with any requirements under those acts concerning the maintenance and availability of the administrative record.

§ 7705. TIME; HOW COMPUTED

In this chapter:

(1) When time is to be reckoned from a day, date, or an act done, the day, date, or day when the act is done shall not be included in the computation.

(2) Computation of a time period shall use calendar days.

Subchapter 2. Standard Procedures

§ 7711. PERMIT PROCEDURES; STANDARD PROVISIONS

(a) Notice through the environmental notice bulletin. When this chapter requires notice through the environmental notice bulletin:

(1) The bulletin shall generate and send an e-mail to notify:

- (A) each person requiring notice under section 7712 of this chapter;
 - (B) the applicant;
 - (C) each person on an interested persons list;
 - (D) each municipality in which the activity to be permitted is located,
except for notice of a draft or final general permit; and
 - (E) each other person to whom this chapter directs that a particular
notice be provided through the bulletin.
- (2) At a minimum, each notice generated by the bulletin shall contain:
- (A) the name and contact information for the person at the Agency
processing the permit;
 - (B) the name and address of the permit applicant, if applicable;
 - (C) the name and address of the facility or activity to be permitted,
if applicable;
 - (D) a brief description of the activity for which the permit would
be issued;
 - (E) the length of the period for submitting written comments and the
process for submitting those comments, if applicable, and notice of the
requirements regarding submission of comments during that period or at a
public meeting in order to appeal under chapter 220 of this title;
 - (F) the process for requesting a public meeting, if applicable;

(G) when a public meeting has been scheduled, the time, date, and location of the meeting and a brief description of the nature and purpose of the meeting;

(H) when issued, the draft permit or notice of intent to deny a permit, and the period and process for submitting written comments on that draft permit or notice;

(I) when issued, the final decision issuing or denying a permit, and the process for appealing the decision; and

(J) any other information that this chapter directs be included in a particular notice to be generated by the bulletin.

(3) The environmental notice bulletin shall provide notice by mail as required by 3 V.S.A. § 2826.

(b) Notice to adjoining property owners. When this chapter requires notice of an application to adjoining property owners, the applicant shall provide notice of the application by U.S. mail to all adjoining property owners, on a form developed by the Secretary, at the time the application is submitted to the Secretary. The form shall state how the property owners can continue to receive notices and information concerning the project as it is reviewed by the Secretary. The applicant shall provide a signed certification to the Secretary that all adjoining property owners have been notified of the application. However, if the applicant has provided written notice to adjoining property owners as part of the preapplication engagement process for complex projects

under rules adopted in accordance with subsection 7703(a) of this title, then instead of the written notice required of the applicant by this subsection, the Department shall provide notice of the application through the environmental notice bulletin to those adjoining property owners who have requested notice.

(c) Comment period length. When this chapter requires the Secretary to provide a public comment period, the length of the period shall be at least 30 days, unless this chapter applies a different period for submitting comments on the particular type of permit.

(d) Period to request a public meeting. When this chapter allows a person to request a public meeting on a draft decision, the person shall submit the request within 14 days of the date on which notice of the draft decision is posted to the environmental notice bulletin, unless this chapter specifies a different period for requesting a hearing on the particular type of permit.

(e) Public meeting; notice; additional comment period. When the Secretary holds a public meeting under this chapter:

(1) The Secretary shall:

(A) provide at least 14 days' prior notice of the public meeting through the environmental notice bulletin, unless this chapter specifies a different notice period for a public meeting on the particular type of permit;

(B) include in the notice, in addition to the information required by subsection (a) of this section, the date the Secretary gave notice of an administratively complete application, if applicable; and

(C) hold the period for written comments open for at least seven days after the meeting.

(2) The applicant or applicant's representative and the Secretary or designee shall attend the meeting. The applicant shall cause to be present those professionals retained in the preparation of the application. At the meeting, the applicant and the Secretary each shall answer questions relevant to the application or draft decision to the best of their ability.

(f) Draft decisions. When this chapter requires the Secretary to post a draft decision or draft general permit to the environmental notice bulletin, the Secretary shall post to the bulletin the draft decision or draft general permit and all documents on which the Secretary relied in issuing the draft. This post shall include instructions on how to inspect and how to request a copy of each other document that is part of the administrative record of the draft decision or permit.

(g) Response to comments. When this chapter requires the Secretary to provide a response to comments, the Secretary shall provide a response to each comment received during the comment period and the basis for the response. The Secretary also shall specify each provision of the draft decision that has been changed in the final decision and the reasons for each change. The Secretary shall post the response to comments to the environmental notice bulletin and send it to all commenters.

(h) Final decisions; content; notice.

(1) The Secretary's final decision on an application for a permit or on the issuance of a general permit shall include a concise statement of the facts and analysis supporting the decision that is sufficient to apprise the reader of the decision's factual and legal basis. The final decision also shall provide notice that it may be appealed and state the period for filing an appeal and how and where to file an appeal.

(2) When this chapter requires that the Secretary post a final decision to the environmental notice bulletin, the Secretary also shall send a copy of the final decision to all commenters.

§ 7712. TYPE 1 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when adopting general permits and considering applications for individual permits under the Clean Air Act and Clean Water Act.

(2) This section governs each application for a permit to be issued by the Secretary pursuant to the requirements of the Clean Air Act and Clean Water Act and to each general permit to be issued under one of those acts. However, the subsection does not apply to a notice of intent under a general permit. The procedures under this section shall be known as Type 1 Procedures.

(b) Notice of application.

(1) The applicant shall provide notice to adjoining property owners.

(2) At least 15 days prior to posting a draft decision, the Secretary shall provide notice of an administratively complete application through the environmental notice bulletin. The environmental notice bulletin shall send notice of such an application to each person to whom notice is federally required.

(3) This subsection (b) shall not apply to a general permit issued under this section.

(c) Notice of draft decision or draft general permit. The Secretary shall provide notice of a draft decision or draft general permit through the environmental notice bulletin and shall post the draft decision or permit to the bulletin. In addition to the requirements of section 7711 of this chapter:

(1) The Secretary shall post a fact sheet to the bulletin.

(2) The environmental notice bulletin shall send notice of the draft to each person to whom notice is federally required.

(3) The Secretary shall provide newspaper notice of the draft decision as required by this subdivision (3).

(A) If the draft decision pertains to an application for an individual permit, the Secretary shall provide notice in a daily or weekly newspaper in the area of the proposed project if the project is classified as major pursuant to the

Clean Water Act or chapter 47 of this title or if required by federal statute or regulation.

(B) If the draft decision is a draft general permit, the Secretary shall provide notice in daily or weekly newspapers in each region of the State to which the draft general permit will apply.

(C) In addition to the requirements of this chapter and 3 V.S.A. § 2826, the notice from the environmental notice bulletin and the newspaper notice shall include all information required pursuant to applicable federal statute and regulation.

(d) Comment period. The Secretary shall provide a public comment period.

(e) Public meeting. On or before the end of the comment period, any person may request a public meeting on the draft decision or draft general permit issued under this section. The Secretary shall hold a public meeting whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at his or her discretion. The Secretary shall provide at least 30 days' notice of the public meeting through the environmental notice bulletin. If the notice of the public meeting is not issued at the same time as the draft decision or draft general permit, the Secretary also shall provide notice of the public meeting in the same manner as required for the draft decision or permit under subsection (c) of this section.

(f) Notice of final decision or final general permit. The Secretary shall provide notice of the final decision or final general permit through the environmental notice bulletin and shall post the final decision or permit to the bulletin. When the Secretary issues the final decision or final general permit, the Secretary shall provide a response to comments.

(g) Compliance with Clean Air and Water Acts. With respect to issuance of a permit under the Clean Air Act or Clean Water Act, if a requirement under those acts directs the Secretary to provide the public with greater notice, opportunity to participate, or access to information than the corresponding requirement of this chapter, the Secretary shall comply with the federal requirement.

§ 7713. TYPE 2 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when considering applications for individual permits, except for individual permits specifically listed in other sections of this subchapter, and when considering other permits listed in this section.

(2) The procedures under this section shall be known as Type 2 Procedures. This section governs an application for each of the following:

(A) an individual permit issued pursuant to the Secretary's authority under this title and 29 V.S.A. chapter 11, except for permits governed by sections 7712 and 7714–7716 of this chapter;

(B) a wetland determination under section 914 of this title;

(C) an individual shoreland permit under chapter 49A of this title;

(D) a public water system source permit under section 1675 of this title;

(E) a provisional certification issued under section 6605d of this title; and

(F) a corrective action plan under section 6648 of this title.

(b) Notice of application.

(1) The applicant shall provide notice of the application to adjoining property owners.

(A) For public water system source protection areas, the applicant also shall provide notice to all property owners located in:

(i) zones 1 and 2 of the source protection area for a public community water system source; and

(ii) the source protection area for a public nontransient noncommunity water system source.

(B) For an individual shoreland permit under chapter 49A:

(i) The notice to adjoining property owners shall be to the adjoining property owners on the terrestrial boundary of the shoreland.

(ii) This chapter does not require notice to owners of property across the lake as defined in that chapter.

(2) The Secretary shall provide notice of an administratively complete application through the environmental notice bulletin.

(c) Notice of draft decision; comment period. The Secretary shall provide notice of a draft decision through the environmental notice bulletin and shall post the draft decision to the bulletin. The Secretary shall provide a public comment period.

(d) Public meeting. The Secretary shall hold a public meeting whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at his or her discretion.

(e) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the final decision to the bulletin. When the Secretary issues the final decision, the Secretary shall provide a response to comments.

§ 7714. TYPE 3 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when adopting general permits, except for general permits governed by section 7712 of this chapter, and when considering other permits listed in this section.

(2) The procedures under this section shall be known as Type 3

Procedures. This section governs each of the following:

(A) Each general permit issued pursuant to the Secretary's authority under this title other than a general permit subject to section 7712 of this chapter. However, this section does not apply to a notice of intent under a general permit.

(B) Issuance of a dam safety order under chapter 43 of this title, except for an unsafe dam order under section 1095 of this title.

(C) An application or request for approval of:

(i) an individual shoreland permit under chapter 49A of this title;

(ii) an aquatic nuisance control permit under chapter 50 of this title;

(iii) a change in treatment for a public water supply under chapter 56 of this title;

(iv) a collection plan for mercury-containing lamps under section 7156 of this title;

(v) an individual plan for the collection and recycling of electronic waste under section 7554 of this title; and

(vi) a primary battery stewardship plan under section 7586 of this title.

(b) Notice of application. The Secretary shall provide notice of an administratively complete application through the environmental notice bulletin.

(c) Notice of draft decision; comment period. The Secretary shall provide notice of the draft decision through the environmental notice bulletin and shall post the draft decision to the bulletin. The Secretary shall provide a public comment period.

(d) Public meeting. The Secretary shall hold a public meeting whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at his or her discretion.

(e) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the final decision to the bulletin. The Secretary shall provide a response to comments.

§ 7715. TYPE 4 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when considering applications for notice of intent under a general permit and other permits listed in this section.

(2) The procedures under this section shall be known as Type 4 Procedures. This section applies to each of the following:

(A) a notice of intent under a general permit issued pursuant to the Secretary's authority under this title; and

(B) an application for each of following permits:

(i) construction or operation of an air contaminant source or class of sources not identified in the State's implementation plan approved under the Clean Air Act;

(ii) construction or expansion of a public water supply under chapter 56 of this title, except that a change in treatment for a public water supply shall proceed in accordance with section 7714 of this chapter;

(iii) a category 1 underground storage tank under chapter 59 of this title;

(iv) a categorical solid waste certification under chapter 159 of this title; and

(v) a medium scale composting certification under chapter 159 of this title.

(b) Notice of application. The Secretary shall provide notice of an administratively complete application through the environmental notice bulletin.

(c) Notice of draft decision; comment period. The Secretary shall provide notice of the draft decision through the environmental notice bulletin and shall post the draft decision to the bulletin. The Secretary shall provide a public comment period of at least 14 days on the draft decision.

(d) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the decision to the bulletin. The Secretary shall provide a response to comments.

§ 7716. TYPE 5 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when issuing emergency permits and other permits listed in this section.

(2) The procedures under this section shall be known as Type 5 Procedures. This section shall govern each of the following:

(A) issuance of temporary emergency permits under section 912 of this title;

(B) applications for public water system operational permits under chapter 56 of this title;

(C) issuance of authorizations, under a stream alteration general permit issued under chapter 41 of this title, for reporting without an application, for an emergency, and for activities to prevent risks to life or of severe damage to improved property posed by the next annual flood;

(D) issuance of emergency permits issued under section 1268 of this title;

(E) issuance of emergency sludge and septage disposal approvals under section 6605 of this title; and

(F) shoreland registrations authorized under chapter 49A of this title.

(b) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the decision to the bulletin.

§ 7717. AMENDMENTS; RENEWALS

(a) A major amendment shall be subject to the same procedures applicable to the original permit decision under this chapter.

(b) A minor amendment shall be subject to the Type 4 Procedures, except that the Secretary need not provide notice of the administratively complete application.

(c) An administrative amendment shall not be subject to the procedural requirements of this chapter.

(d) A person may renew a permit under the same procedures applicable to the original permit decision under this chapter.

(e) With respect to amending a permit issued under the Clean Air Act or Clean Water Act, if a requirement under those acts directs the Secretary to provide the public with greater notice, opportunity to participate, or access to information than the corresponding requirement of this chapter, the Secretary shall comply with the federal requirement.

§ 7718. EXEMPTIONS

This subchapter shall not govern an application or petition for:

(1) an unsafe dam order under section 1095 of this title;

(2) a potable water supply and wastewater permit under subsection 1973(j) of this title;

(3) a hazardous waste facility certification under section 6606 of this title; and

(4) a certificate of need under section 6606a of this title.

Sec. 2. RULES; EFFECT ON PROCEDURAL REQUIREMENTS

Sec. 1 of this act shall take precedence over any inconsistent requirements for notice and processing of applications contained in rules adopted by the Department of Environmental Conservation other than rules pertaining to applications that are exempt under Sec. 1, 10 V.S.A. § 7718. On or before July 1, 2019, the Secretary of Natural Resources shall commence and complete amendments to conform these rules to Sec. 1.

* * * Environmental Notice Bulletin * * *

Sec. 3. 3 V.S.A. § 2826 is amended to read:

§ 2826. ENVIRONMENTAL NOTICE BULLETIN; PERMIT HANDBOOK

(a) The Secretary shall establish ~~procedures for the publication of an~~ environmental notice bulletin, in order to provide for the timely public notification of permit applications, notices, comment periods, hearings, and permitting decisions. ~~The Secretary shall begin publication of the bulletin by no later than July 1, 1995 on the Agency's website. At a minimum, the bulletin shall contain the following information:~~ The bulletin shall consist of a

website and an e-mail notification system. The Secretary shall ensure that the website for the bulletin is readily accessible from the Agency's main web page.

(1) ~~notice of administratively complete permit applications submitted to the Department of Environmental Conservation;~~ When 10 V.S.A. chapter 170 requires the posting of information to the bulletin, the Secretary shall post the information to the bulletin's website.

(2) ~~notice of the comment period on the application and draft permit, if any, for those applications which were noticed;~~ When 10 V.S.A. chapter 170 requires notice to persons through the environmental notice bulletin, the bulletin shall generate an e-mail notification to those persons containing the information required by that chapter.

(3) ~~notice of the issuance of a draft permit, if required by law, for those applications that were noticed;~~ The Secretary shall provide members of the public the ability to register, through the bulletin, for a list of interested persons to receive e-mail notification of permit activity based on permit type, municipality, proximity to a specified address, or a combination of these characteristics.

(4) ~~information on how to request a public hearing or meeting;~~ If an individual does not have an e-mail address, the individual may request to receive notifications through U.S. mail. On receipt of such a request, the Secretary shall mail to the individual the same information that the individual would have otherwise received through an e-mail generated by the bulletin.

~~(5) notice of the name of the staff person to contact for information regarding public hearings or meetings with respect to a particular application.~~

~~(6) notice of the issuance or denial of a permit for those applications that were noticed.~~

(b) ~~By January 1, 1995, the~~ The Secretary shall publish a permit handbook which lists all of the permits required for the programs administered by the Department of Environmental Conservation. The handbook shall include examples of activities that require certain permits, an explanation in lay terms of each of the permitting programs involved, and the names, addresses, and telephone numbers of the person or persons to contact for further information for each of the permitting programs. The Secretary shall update the handbook ~~shall be updated,~~ periodically.

Sec. 4. REPORTS; RULEMAKING; BULLETIN; REVISION

(a) On or before September 15, 2016, the Secretary shall commence all rulemaking required by Sec. 1 of this act.

(b) On or before February 15, 2017, the Secretary shall report in writing to the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources on the Secretary's progress in adopting the rules required by Sec. 1 of this act and revising and reestablishing the environmental notice bulletin in accordance with Secs. 1 and 3 of this act.

(c) On or before July 1, 2017, the Secretary shall revise and reestablish the environmental notice bulletin to conform to the requirements of Secs. 1 and 3 of this act.

(d) On or before February 15, 2020, the Secretary of Natural Resources shall submit a written report to the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources that:

(1) summarizes the Secretary's implementation of Secs. 1 through 3 of this act and details the steps taken to implement those sections;

(2) provides the Secretary's assessment of the effect of 10 V.S.A. chapter 170 on the amount of time taken by the Department of Environmental Conservation (DEC), during the preceding two calendar years, to review and issue decisions on applications and permits subject to that chapter and the data supporting that assessment;

(3) provides the Secretary's assessment of the effect of 10 V.S.A. chapter 170 on public participation, during the preceding two calendar years, in the review of applications and permits subject to that chapter and the data supporting that assessment;

(4) provides:

(A) the total and annual number of appeals, during 2018 and 2019, of DEC decisions subject to 10 V.S.A. chapter 170 and how each appeal was resolved;

(B) the total and annual number of times that a party moved to dismiss an issue or an appeal based on the requirements of 10 V.S.A. § 8504(d)(2) and the Environmental Division's ruling on those motions; and

(C) a comparison with the total and annual number of appeals, during calendar years 2015 through 2017, from DEC programs that become subject to the procedures of 10 V.S.A. chapter 170 on January 1, 2018, and how each of those appeals was resolved;

(5) provides the Secretary's overall evaluation of the success of Secs. 1 and 3 of this act in standardizing DEC permit procedures, increasing public participation in DEC's permit process, and resolving issues related to the issuance of DEC permits without appeal;

(6) based on the track record of 10 V.S.A. chapter 170 to date of the report, states the Secretary's recommendation on whether there is justification to amend the process for appealing those acts and decisions of the Secretary subject to that chapter; and

(7) if the recommendation under subdivision (6) of this subsection is affirmative, provides the Secretary's recommended amendments to the process for appealing those acts and decisions of the Secretary subject to 10 V.S.A. chapter 170.

* * * Appeals from Agency of Natural Resources to the
Environmental Division * * *

Sec. 5. 10 V.S.A. § 8504 is amended to read:

§ 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

* * *

(d) Requirement ~~that aggrieved Act 250 parties~~ to participate before the District Commission or the Secretary.

(1) ~~No~~ Participation before District Commission. An aggrieved person ~~may~~ shall not appeal an act or decision that was made by a District Commission unless the person was granted party status by the District Commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in the proceedings before the District Commission, and retained party status at the end of the District Commission proceedings. In addition, the person may only appeal those issues under the criteria with respect to which the person was granted party status.

~~(2) Notwithstanding subdivision (d)(1) of this section,~~ However, notwithstanding these limitations, an aggrieved person may appeal an act or decision of the District Commission if the Environmental judge determines that:

(A) there was a procedural defect ~~which~~ that prevented the person from obtaining party status or participating in the proceeding;

(B) the decision being appealed is the grant or denial of party status; or

(C) some other condition exists which would result in manifest injustice if the person's right to appeal was disallowed.

(2) Participation before the Secretary.

(A) An aggrieved person shall not appeal an act or decision of the Secretary unless the person submitted to the Secretary a written comment during the comment period or an oral comment at the public meeting conducted by the Secretary. In addition, the person may only appeal issues related to the person's comment to the Secretary.

(i) To be sufficient for the purpose of appeal, a comment to the Secretary shall identify each reasonably ascertainable issue with enough particularity so that a meaningful response can be provided.

(ii) The appellant shall identify each comment that the appellant submitted to the Secretary that identifies or relates to an issue raised in his or her appeal.

(iii) A person moving to dismiss an appeal or an issue raised by an appeal pursuant to this subdivision (A) shall have the burden to prove that the requirements of this subdivision (A) are not satisfied.

(B) Notwithstanding the limitations of subdivision (2)(A) of this subsection, an aggrieved person may appeal an act or decision of the Secretary if the Environmental judge determines that:

(i) there was a procedural defect that prevented the person from commenting during the comment period or at the public meeting or otherwise participating in the proceeding;

(ii) the Secretary did not conduct a comment period and did not hold a public meeting;

(iii) the person demonstrates that an issue was not reasonably ascertainable during the review of an application or other request that led to the Secretary's act or decision; or

(iv) some other condition exists which would result in manifest injustice if the person's right to appeal was disallowed.

* * *

(p) Administrative record. The Secretary shall certify the administrative record as defined in chapter 170 of this title and shall transfer a certified copy of that record to the Environmental Division when:

(1) there is an appeal of an act or decision of the Secretary that is based on that record; or

(2) there is an appeal of a decision of a District Commission and the applicant used a decision of the Secretary based on that record to create a presumption under a criterion of subsection 6086(a) of this title that is at issue in the appeal.

Sec. 5a. 10 V.S.A. § 8506 is amended to read:

§ 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS
FACILITY; APPEALS

* * *

(c) The provisions of subdivisions 8504(c)(2) (notice of appeal), (d)(2) (participation before the Secretary), and (f)(1)(A) (automatic stays of certain permits), and subsections 8504(j) (appeals under a general permit) and (n) (intervention), and (p) (administrative record) of this title shall apply to appeals under this section except that, with respect to subsection (p), the Secretary shall transfer a certified copy of the administrative record to the Board.

* * *

Sec. 5b. PURPOSE

The purposes of the amendments contained in Secs. 5 (appeals to the Environmental Division) and 5a (renewable energy plant; telecommunications facility; appeals) of this act are to:

(1) require participation in the permitting process of the Department of Environmental Conservation (DEC) and identification of concerns about an application early in that process so that DEC and the applicant have an opportunity to address those concerns where possible before a permit becomes final and subject to appeal; and

(2) require that an issue raised on appeal be identified or related to an issue identified in a comment to the Secretary while guarding against creating

an overly technical approach to the preservation of issues for the purpose of appeal when interpreting whether an appeal satisfies requirements of 10 V.S.A. § 8504(d)(2)(A).

Sec. 5c. FEDERALLY DELEGATED PROGRAMS

If the U.S. Environmental Protection Agency notifies the Secretary of Natural Resources that a provision of this act is inconsistent with the Clean Air Act or Clean Water Act as defined in 10 V.S.A. chapter 170 or federal regulations adopted under one of those acts, the Secretary shall report the receipt of this notification to the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources. This report shall attach the notification and may include proposed statutory revisions to address the inconsistency.

* * * Conforming Amendments * * *

Sec. 6. 10 V.S.A. § 556 is amended to read:

§ 556. PERMITS FOR THE CONSTRUCTION OR MODIFICATION OF
AIR CONTAMINANT SOURCES

* * *

(b) The ~~secretary~~ Secretary may require an applicant to submit any additional information ~~which~~ that the ~~secretary~~ Secretary considers necessary to make the completeness determination required in subsection (a) of this section and shall not grant a permit until the information is furnished and evaluated. ~~For air contaminant sources that have allowable emissions of more~~

~~than 10 tons per year of all contaminants, excluding greenhouse gases, upon making a determination to issue a draft permit, the secretary shall issue a notice that includes a brief description of the source and the address where a complete permit application and draft permit may be reviewed, shall provide a public comment period on all draft permits, and shall hold a public informational meeting, if requested. The public comment period on a draft permit for a source that has allowable emissions of more than 10 tons per year, excluding greenhouse gases, shall be 30 days if the source constitutes a major stationary source or major modification under the rules of the secretary and shall otherwise be 10 days. For air contaminant sources that have allowable emissions of less than 10 tons per year of all contaminants, the secretary may provide an opportunity for public comment or a public informational hearing, or both, before ruling on a proposed permit. In determining whether to provide for comment or a meeting, the secretary shall consider the degree of toxicity of the air contaminant and the emission rate, the proximity of the source to residences, population centers and other sensitive human receptors, and emission dispersion characteristics at or near the source. The secretary shall fully consider all written and oral submissions concerning proposed permits prior to taking final action on those proposed permits. When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title.~~

* * *

Sec. 7. 10 V.S.A. § 556a is amended to read:

§ 556a. OPERATING PERMITS

* * *

~~(c) For air contaminant sources that have allowable emissions of more than 10 tons per year of all contaminants, excluding greenhouse gases, upon making a determination to issue a draft permit, the secretary shall issue a notice that includes a brief description of the source and the address where a complete permit application and a draft permit may be reviewed, shall provide a public comment period on all draft permits, and shall hold a public informational meeting, if requested. The public comment period on a draft permit for a source that has allowable emissions of more than 10 tons per year, excluding greenhouse gases, shall be 30 days if the source is subject to subchapter V (permits) of 42 U.S.C. chapter 85 (air pollution prevention and control) and shall otherwise be 10 days. For air contaminant sources that have allowable emissions of less than ten tons per year of all contaminants, the secretary may provide an opportunity for public comment or a public informational hearing, or both, before ruling on a proposed permit. In determining whether to provide for comment or a meeting, the secretary shall consider the degree of toxicity of the air contaminant and the emission rate, the proximity of the source to residences, population centers and other sensitive human receptors, and emission dispersion characteristics at or near the source. The secretary shall fully consider all written and oral submissions concerning proposed permits~~

~~prior to taking final action on those proposed permits.~~ When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title.

* * *

(e) A ~~person may renew a~~ permit issued under this section ~~may be renewed~~ upon application to the ~~secretary~~ Secretary for a fixed period of time, not to exceed five years.

~~(1) A permit being renewed shall be subject to the same procedural requirements, including those for public participation, that apply to initial permit issuance, except that a permit being renewed shall not be subject to the public notice and comment requirements of this chapter if all of the following apply:~~

~~(A) The secretary determines that no substantive changes have occurred at the air contaminant source that would affect emissions or require changes to the permit.~~

~~(B) The secretary determines no new statutory or regulatory requirements need to be added to the permit.~~

~~(C) The air contaminant source does not require a permit under subchapter V (permits) of 42 U.S.C. chapter 85 (air pollution prevention and control).~~

~~(2)~~ The ~~secretary~~ Secretary shall not issue a permit renewal unless the applicant first demonstrates that the emissions from the subject source meet all

applicable emission control requirements or are subject to, and in compliance with, an appropriate schedule of compliance.

* * *

(h)(1) ~~The secretary may issue~~ Secretary may adopt, as a rule under 3 V.S.A. chapter 25, a general operating permits permit covering numerous similar sources. ~~A general permit shall be adopted as an administrative rule under the provisions of 3 V.S.A. chapter 25. Each rule creating a general permit shall include provisions that require public notice of the fact that specified emitters have applied for general permits.~~

~~(2) Each rule creating a general permit shall provide a process by which interested persons can obtain detailed information about the nature and extent of the activity proposed to receive a general permit, and a process by which aggrieved persons can obtain an opportunity to be heard on a request that the general permit be issued only subject to specific conditions to limit or mitigate the effects of the emissions in question. Based on information presented at such a hearing, an applicant may be required to obtain a permit other than a general permit, or may obtain a general permit subject to specified conditions.~~

* * *

Sec. 8. 10 V.S.A. § 754 is amended to read:

§ 754. FLOOD HAZARD AREA RULES; USES EXEMPT FROM
MUNICIPAL REGULATION

* * *

(b) Required rulemaking content. The rules shall:

(1) set forth the requirements necessary to ensure uses exempt from municipal regulation are regulated by the State in order to comply with the regulatory obligations set forth under the National Flood Insurance Program.

(2) be designed to ensure that the State and municipalities meet community eligibility requirements for the National Flood Insurance Program.

~~(3) require that the Secretary provide notice to a municipality in which a use exempt from municipal regulation will occur of an application received under this section and a copy of the permit issued, unless a use is authorized to occur without notification of or reporting to the Secretary. [Repealed.]~~

* * *

(f) Permit requirement. ~~Beginning March 1, 2015, no person~~ A person shall not commence or conduct a use exempt from municipal regulation in a flood hazard area or river corridor in a municipality that has adopted a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 or commence construction of a State-owned and -operated institution or facility located within a flood hazard area or river corridor, without a permit issued under the rules required under subsection (a) of this section by the Secretary or by a State agency delegated permitting authority under subsection (g) of this section. When an application is filed under this section, the Secretary or delegated State agency shall proceed in accordance with chapter 170 of this title.

* * *

Sec. 9. 10 V.S.A. § 914 is amended to read:

§ 914. WETLANDS DETERMINATIONS

* * *

~~(c) The Secretary shall provide by certified mail written notice of a proposed determination to the owner of each parcel of land within or adjacent to the wetland or buffer zone in question; publish notice on the Agency website; and provide an electronic notice to persons who have requested to be on a list of interested persons. Such notice shall include the date of the Secretary's proposed determination and shall provide no fewer than 30 days from the date of the Secretary's proposed determination within which to file written comments or to request that the Secretary hold a public meeting on the proposed determination. The provisions of chapter 170 of this title shall apply to issuance of determinations under this section.~~

~~(d) The Secretary shall provide, in person, by mail, or by electronic notice, a written copy of a wetland determination issued under this section to the owner of each affected parcel of land and to the requesting petitioner.~~

[Repealed.]

* * *

Sec. 10. 10 V.S.A. § 1022 is amended to read:

§ 1022. APPLICATION FOR ALTERATION

A person proposing to change, alter, or modify the course, current, or cross section of a watercourse shall apply in writing to the ~~secretary~~ Secretary for a

permit to do so. The application shall describe the location and purpose of the proposed change and shall be accompanied by the maps and plans and other information the ~~secretary~~ Secretary shall direct. ~~A conformed copy shall be simultaneously filed with the town clerk of the town in which the proposed alteration is located, and mailed to each owner of property that abuts or is opposite the land where the alteration is to take place. The town clerk shall forthwith post the copy in the town office.~~ When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title and the requirements of this subchapter.

Sec. 11. 10 V.S.A. § 1023 is amended to read:

§ 1023. INVESTIGATION, PERMIT

* * *

(b) The reasons for the action taken under this section shall be set forth in writing to the applicant. ~~Notice of the action of the Secretary shall also be sent to the selectboard of the town in which the proposed change is located, and to each owner of property which abuts or is opposite the land where the alteration is to take place.~~

* * *

Sec. 12. 10 V.S.A. § 1083 is amended to read:

§ 1083. APPLICATION

(a) Any person who proposes to undertake an action subject to regulation pursuant to section 1082 of this title shall apply in writing to the ~~state~~ State

~~agency having jurisdiction, and shall give notice thereof to the governing body of the municipality or municipalities in which the dam or any part of the dam is to be located.~~ The application shall set forth:

* * *

Sec. 13. 10 V.S.A. § 1085 is amended to read:

§ 1085. NOTICE OF APPLICATION

Upon receipt of the application required by section 1082 of this title, the ~~state~~ State agency having jurisdiction shall give notice to the legislative body of each municipality in which the dam is allocated and to all persons interested.

(1) ~~For any project subject to its jurisdiction under this chapter, on the petition of 25 or more persons the department shall, or on its own motion it may, hold a public information meeting in a municipality in the vicinity of the proposed project to hear comments on whether the proposed project serves the public good and provides adequately for the public safety. Public notice shall be given by posting in the municipal offices of the towns in which the project will be completed and by publishing in a local newspaper at least 10 days before the meeting.~~ The Department shall proceed in accordance with chapter 170 of this title.

(2) For any project subject to its jurisdiction under this chapter, the public service board shall hold a hearing on the application. The purpose of the hearing shall be to determine whether the project serves the public good as

defined in section 1086 of this title and provides adequately for the public safety. The hearing shall be held in a municipality in the vicinity of the proposed project and may be consolidated with other hearings, including hearings under 30 V.S.A. § 248 concerning the same project. Notice shall be given at least 10 days before the hearing to interested persons by posting in the municipal offices of the towns in which the project will be completed and by publishing in a local newspaper.

Sec. 14. 10 V.S.A. § 1100 is amended to read

§ 1100. FEDERAL COOPERATION

* * *

(4) Where cultivated agricultural lands in excess of one hundred acres are to be taken for the purposes of a flood control project, or the recreational development of the ~~state~~ State or the economy of the river basin involved may be affected thereby, the ~~department, of its own motion, may, and upon petition to it by interested parties, shall, appoint a time and place for hearing in the vicinity of the flood control project, hold a public information meeting after giving notice to interested parties as it directs~~ Department shall provide notice, an opportunity to submit comments, and an opportunity to request a public meeting in accordance with section 7713 (Type 2 Procedures) of this title. ~~Upon hearing, the department~~ The Department shall determine the effect the flood control project will have upon agricultural land uses or recreational values in this ~~state~~ State, or upon the economy of the river basin involved, and

report its findings and recommendations to the proper federal agency or authority having the flood control project in charge for its consideration and recognition. The Department shall post its findings and recommendations as a final decision in accordance with chapter 170 of this title.

Sec. 15. 10 V.S.A. § 1252 is amended to read:

§ 1252. CLASSIFICATION OF WATERS; MIXING ZONES

* * *

(d) Prior to the initial authorization of a new waste management zone, except those created pursuant to subsection (b) of this section, or prior to the expansion of the size of an existing zone created under this section, in order to accommodate an increased discharge, the Secretary shall:

(1) Prepare a draft permit which includes a description of the proposed waste management zone ~~prior to publishing the notice required by subdivision (2) of this subsection~~ and proceed in accordance with subsections 7713(c), (d), and (e) of this title.

(2) ~~Publish notice in both a local newspaper generally circulating in the area where the affected waters are located and a separate newspaper generally circulating throughout the State not less than 21 days prior to the public hearing required by this subsection. The notice shall describe the draft permit and proposed waste management zone and provide for the opportunity to file written comment for not less than seven days following the hearing.~~

~~(3) Forward copies of the notice, the draft permit and the description of the proposed waste management zone to any municipality and regional planning commission within the area where the affected waters are located not less than 21 days prior to the hearing. The notice, the draft permit and the description of the waste management zone shall also be provided to any person upon request.~~

~~(4) Hold a public hearing convenient to the waters affected.~~

~~(5) Give due consideration to the cumulative impact of overlapping waste management zones.~~

~~(6)~~(3) Determine that the creation or expansion of such a waste management zone is in the public interest after giving due consideration to the factors specified in subdivisions 1253(e)(1) through (10) of this title.

~~(7)~~(4) Determine that the creation or expansion of such a zone will not:

* * *

~~(8)~~(5) Provide a written explanation with respect to subdivisions ~~(5)~~(2) through ~~(7)~~(4) of this subsection.

* * *

Sec. 16. 10 V.S.A. § 1263 is amended to read:

§ 1263. DISCHARGE PERMITS

* * *

~~(b) Except for applications for permission to discharge under the terms of a previously issued general permit, the secretary shall provide for notice of each~~

~~application to the public and any appropriate officials of another state and the federal government including the administrator of the United States Environmental Protection Agency, and shall provide an opportunity for written comments or a public hearing or both on the application before making a final ruling on the application. Prior to issuing a general permit, the secretary shall give notice as provided in this subsection and provide for written comments or a public hearing or both as provided in this subsection. For applications for permission to discharge under the terms of a previously issued general permit, the applicant shall provide notice, on a form provided by the secretary, to the municipal clerk of the municipality in which the discharge is located at the time the application is filed with the secretary, and the secretary shall provide an opportunity for written comment, regarding whether the application complies with the terms and conditions of the general permit, for ten days following receipt of the application. When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title. The ~~secretary~~ Secretary may require any applicant to submit any additional information, ~~which~~ that the ~~secretary~~ Secretary considers necessary and may refuse to grant a permit, or permission to discharge under the terms of a general permit, until the information is furnished and evaluated.~~

* * *

Sec. 17. 10 V.S.A. § 1265 is amended to read:

§ 1265. TEMPORARY POLLUTION PERMITS

* * *

(b) ~~The Secretary shall give notice of each application to the public and any appropriate officials of another state and the federal government including the administrator of the U.S. Environmental Protection Agency, and shall provide an opportunity for written comments or a public hearing, or, both on the application before ruling on the application.~~ When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title. The Secretary may require the applicant to submit any additional information ~~which he or she~~ that the Secretary considers necessary, and may refuse to grant a permit until the information is furnished and evaluated.

* * *

Sec. 18. 10 V.S.A. § 1268 is amended to read:

§ 1268. EMERGENCY PERMITS

When a discharge permit holder finds that pollution abatement facilities require repairs, replacement or other corrective action in order for them to continue to meet standards specified in the permit, ~~he or she~~ the holder may apply in the manner specified by the ~~secretary~~ Secretary for an emergency pollution permit for a term sufficient to effect repairs, replacements or other corrective action. ~~The permit may be issued without prior public notice if the nature of the emergency will not provide sufficient time to give notice;~~

~~provided that the secretary shall give public notice as soon as possible but in any event no later than five days after the effective date of the emergency pollution permit. The Secretary shall proceed in accordance with chapter 170 of this title. No emergency pollution permit shall be issued unless the applicant certifies and the secretary~~ Secretary finds that:

* * *

Sec. 19. 10 V.S.A. § 1418 is amended to read:

§ 1418. GROUNDWATER WITHDRAWAL PERMIT

* * *

~~(c)(1) At least 30 days before filing an application for a permit under this section, the applicant shall hold an informational hearing in the municipality in which the withdrawal is proposed in order to describe the proposed project and to hear comments regarding the proposed project. Public notice shall be given by posting in the municipal offices of the town in which the withdrawal is proposed and by publishing in a local newspaper at least 10 days before the meeting.~~

~~(2) On or before the date of filing with the secretary of natural resources an application for a permit under this section, an applicant for a withdrawal under this section shall notify:~~

~~(A) the clerk, legislative body, and any conservation commission in the municipality in which the proposed withdrawal is located;~~

~~(B) adjoining municipalities;~~

~~(C) the regional planning commission in the region where the proposed withdrawal is located;~~

~~(D) all landowners and mobile home park residents within the zone of influence of a groundwater withdrawal or within one quarter mile downstream from a withdrawal from a spring. Notice to the officers of a condominium association shall be deemed sufficient under this subdivision for notice to residents of a condominium; and~~

~~(E) any public water systems permitted by the agency of natural resources in the municipality where the proposed withdrawal is located.~~

~~(3) The applicant shall publish notice of the application in a newspaper of general circulation in the area in which the withdrawal is proposed and shall post a copy of the notice in the municipal clerk's office in the municipality in which the withdrawal is located.~~

~~(4) On its own motion or on receipt of a written request, the agency shall hold a public meeting in the municipality in which the withdrawal is proposed in order to describe the proposed project and to hear comments regarding the proposed project. Opportunity shall be given all participants at a public meeting to ask questions and comment on all issues involved. The agency shall prepare a responsiveness summary for each public meeting conducted. Public notice shall be given by posting in the municipal offices of the town in which the withdrawal is proposed and by publishing in a local newspaper at least 10 days before the meeting.~~

~~(5) No defect in the form or substance of any notice requirements in subdivision (1), (2), (3), or (4) of this subsection shall invalidate an application for a permit under this section provided that reasonable efforts are made to provide adequate posting and notice. An application for a permit under this section shall be invalid when a defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the environmental division, the applicant may reapply and provide new posting and notice. When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title.~~

* * *

Sec. 20. 10 V.S.A. § 1443 is amended to read:

§ 1443. INDIVIDUAL PERMIT REQUIREMENTS FOR IMPERVIOUS
SURFACE OR CLEARED AREA IN A PROTECTED
SHORELAND AREA

* * *

(c) Permit process.

~~(1) A person applying for a permit shall do so on a form provided by the Secretary. The application shall be posted on the Agency's website.~~

~~(2) A person applying for a permit shall provide notice, on a form provided by the Secretary, to the municipal clerk of the municipality in which the construction of impervious surface or creation of cleared area is located at the time the application is filed with the Secretary.~~

~~(3) The Secretary shall provide an opportunity for written comment regarding whether an application complies with the requirements of this chapter or any rule adopted by the Secretary, for 30 days following receipt of the application. When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title.~~

* * *

Sec. 21. 10 V.S.A. § 1455 is amended to read:

§ 1455. AQUATIC NUISANCE CONTROL PERMIT

* * *

~~(h) The Secretary shall adopt procedures under 3 V.S.A. chapter 25 which will provide an opportunity for public review and comment on permit applications. The procedures shall classify permit applications by degree of environmental risk involved and establish appropriate opportunities for public notice and comment for each class. When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title.~~

* * *

Sec. 22. 10 V.S.A. § 1456 is amended to read:

§ 1456. AQUATIC SPECIES RAPID RESPONSE GENERAL PERMITS

* * *

~~(c) The secretary shall provide notice of the application to the municipal clerk of the municipality or municipalities in which the proposed control activity will be conducted at the time the request for authorization is filed with~~

~~the secretary. The secretary shall provide an opportunity for written comment regarding whether the request complies with the terms and conditions of the aquatic species rapid response general permit for 10 days following receipt of the request for authorization.~~ When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title.

* * *

Sec. 23. 10 V.S.A. § 1675 is amended to read:

§ 1675. PERMITS; CONDITIONS; DURATION; SUSPENSION OF
REVOCATION

* * *

(c) ~~Notice and hearing.~~ Permit process; additional information.

~~(1) The Secretary shall give notice of each application for a new source for a community or nontransient, noncommunity water system to the public by publication in a newspaper of general circulation for the area containing the proposed system and by causing a notice to be posted in the clerk's office for the municipality containing the proposed system or source. The Secretary shall also give notice to appropriate State agencies. The applicant shall notify all adjoining landowners. The Secretary shall provide an opportunity for written comment or a public hearing, or both, on the application before ruling on the application.~~ When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title. The Secretary may require the applicant to submit additional information which

that the Secretary considers necessary in order to support the findings required in subsection (b) of this section, and may refuse to grant a permit until the information is furnished and evaluated. The Secretary may also consult with the Commissioner of Health, as necessary, in making decisions regarding health issues raised by the application. The Commissioner's response, if any, shall be part of the public record for the application.

~~(2) The Secretary shall give notice to the public of each application by a public community system for the addition of a new type of disinfectant by publication in a newspaper of general circulation for the area containing the proposed system and by causing a notice to be posted in the clerk's office for the municipality in which the system is located. The Secretary shall also give notice to appropriate State agencies. The Secretary shall provide an opportunity for written comment and shall, upon request, provide for a public hearing on the application before ruling on the application. The Secretary may require the applicant to submit additional information which the Secretary considers necessary in order to support the findings required in subsection (b) of this section, and may refuse to grant a permit until the information is furnished and evaluated. The Secretary may also consult with the Commissioner of Health, as necessary, in making decisions regarding health issues raised by the application. The Commissioner's response, if any, shall be part of the public record for the application.~~

* * *

Sec. 24. 10 V.S.A. § 1679 is amended to read:

§ 1679. PUBLIC WATER SOURCE PROTECTION AREAS

* * *

~~(d) The Secretary shall give notice of each proposed public water source protection area to the public by publication in a newspaper of general circulation for the area containing the proposed protection area and by causing a notice to be posted in the clerk's office for the municipality containing the proposed area. The Secretary shall also give notice to adjoining landowners and all appropriate officials of municipalities and State agencies. The Secretary shall provide an opportunity for written comment or a public hearing, or both, on the proposed area before designating the area. If the area is to be classified under chapter 48 of this title, the classification procedures shall satisfy the provisions of this subsection. When the Secretary proposes to designate a public water source protection area under the rules adopted pursuant to subsection (a) of this section, the Secretary shall proceed in accordance with chapter 170 of this title.~~

* * *

Sec. 25. 10 V.S.A. § 6605 is amended to read:

§ 6605. SOLID WASTE MANAGEMENT FACILITY CERTIFICATION

* * *

~~(f) On or before the date of filing any certification or permit application for a facility, the applicant shall send notice and a copy of the application to the~~

~~municipality where the facility is proposed to be or is located, and any adjacent Vermont municipality if the land is located on a boundary. The applicant shall furnish to the certifying or permitting authority the names of those furnished notice of application. Notwithstanding the provisions of subsection (c) of this section, the Secretary shall not issue a certification for a new facility or a recertification for an existing facility unless the town, city, or village in which the facility is located has been notified. When an application for a certification is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title.~~

(g)(1) Notwithstanding any ~~other~~ contrary provision of this section, the Secretary may authorize the land disposal or management of sludge or septage by an applicant at any certified site or facility with available capacity, provided the Secretary finds:

* * *

(2) ~~The Secretary shall, following his or her issuance of approval of emergency sludge or septage disposal under this subsection, provide public notice of that action. Issuance of an approval under this subsection shall comply with section 7716 of this title.~~

* * *

Sec. 26. 10 V.S.A. § 6605c is amended to read:

§ 6605c. SOLID WASTE CATEGORICAL CERTIFICATIONS

* * *

~~(d) On or before the date of filing any certification application for a facility, the applicant shall send notice and a copy of the application to the municipality where the facility is proposed to be or is located and any adjacent Vermont municipality if the facility is located on a boundary. The applicant shall furnish the Secretary the names of those noticed of the application. When an application for a certification is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title.~~

* * *

Sec. 27. 10 V.S.A. § 6605d is amended to read:

§ 6605d. PROVISIONAL CERTIFICATION

* * *

~~(e) The Secretary shall provide notice of the opportunity for public comment on an application for provisional certification, any proposed findings with respect to the application, and the time and place of a public informational meeting.~~

~~(1) The notice shall be published at least 14 days prior to the meeting and the public comment period shall end no sooner than 14 days after the meeting.~~

~~(2) In addition to the publication of notice in newspapers of general circulation in the area where the facility is located, the following persons shall be notified:~~

~~(A) The legislative body and the planning commission of the municipality in which the facility is located and the legislative bodies and planning commissions of all municipalities that will be served by the facility.~~

~~(B) All landowners whose property adjoins the facility.~~

~~(C) Any other state agency or subdivision of the state that has issued or may be required to issue a permit for the facility.~~

~~(D) The regional planning commission and any solid waste district serving the town, city or gore where the facility is located.~~

~~(E) Community or interest groups or organizations that have requested notice in writing prior to the date the hearing is warned. When an application for a provisional certification is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title.~~

* * *

~~(g) A determination of the Secretary under this section may be reviewed under subchapter 5 of chapter 151 of this title. [Repealed.]~~

(h) If the Secretary finds that emergency action is required for the disposal of solid waste in Vermont facilities, the Secretary may issue an emergency provisional certification. ~~Notice~~ Notwithstanding any contrary requirement of chapter 170 of this title, notice of a proposed emergency provisional certification shall be published at least seven calendar days prior to the meeting and the public comment period shall end no sooner than three calendar days after the meeting. An emergency provisional certification granted in

accordance with this subsection shall be issued no more than once and shall terminate 60 days after issuance, unless the Secretary reissues the certification under this section as a provisional certification. Except as otherwise required by this subsection, an emergency provisional certification shall be subject to requirements that apply to provisional certification.

* * *

(j) ~~The Secretary may not issue a provisional certification:~~

~~(1) to the owner or operator of a solid waste management facility for which a permit has been denied under chapter 151 of this title prior to January 1, 1990, until the owner or operator is subsequently issued a permit under chapter 151 of this title; or~~

~~(2) to the owner or operator of a solid waste management facility that is subject to an appeal filed prior to January 1, 1990, so long as the appeal is still pending. [Repealed.]~~

Sec. 28. 10 V.S.A. § 6648 is amended to read:

§ 6648. CORRECTIVE ACTION PLAN

* * *

~~(e) Prior to approval of the corrective action plan, the Secretary shall provide notice to the public by publishing notice in a local newspaper of general circulation where the property is located and providing written notice to the clerk for the municipality in which the property is located. The clerk shall post the notice in a location conspicuous to the public. The Secretary~~

~~shall review any public comment submitted prior to approval of the corrective action plan. The notice shall include all the following:~~

~~(1) a description of any proposed abatement, investigation, remediation, removal, and monitoring activities;~~

~~(2) a statement that the Secretary is considering approving a corrective action plan that provides for those activities;~~

~~(3) a request for public comment on the proposed activities to be submitted within 15 days after publication;~~

~~(4) the name, telephone number, and address of an agency official who is able to answer questions and accept comments on the matter. Before approving a corrective action plan under this subchapter, the Secretary shall proceed in accordance with chapter 170 of this title.~~

* * *

Sec. 29. 10 V.S.A. § 7156 is amended to read:

§ 7156. AGENCY RESPONSIBILITIES

* * *

~~(c) Public input. The Agency shall establish a process under which a collection plan for a mercury-containing lamp is, prior to plan approval or amendment, available for public review and comment for 30 days. In establishing such a process, the Agency shall consult with interested persons, including manufacturers, environmental groups, wholesalers, retailers, municipalities, and solid waste districts. Procedure. Before approving a~~

collection plan under this chapter, the Secretary shall proceed in accordance with chapter 170 of this title.

* * *

Sec. 30. 10 V.S.A. § 7554 is amended to read:

§ 7554. MANUFACTURER OPT-OUT INDIVIDUAL PLAN

* * *

(d) ~~Public review and consultation. Prior to approval of a plan under this section, the Agency shall make the manufacturer's proposed plan available for public review and comment for at least 30 days.~~ Before approving an individual plan under this section, the Secretary shall proceed in accordance with chapter 170 of this title.

* * *

Sec. 31. 10 V.S.A. § 7586 is amended to read:

§ 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

(a) Approval of plan. Within 90 days after receipt of a proposed primary battery stewardship plan, not including the time required for public comment under ~~subsection (e) of this section~~ chapter 170 of this title, the Secretary shall determine whether the plan complies with the requirements of section 7584 of this title. If the Secretary determines that a plan complies with the requirements of section 7584 of this title, the Secretary shall notify the applicant of the plan approval in writing. If the Secretary rejects a primary battery stewardship plan, the Secretary shall notify the applicant in writing of

the reasons for rejecting the plan. An applicant whose plan is rejected by the Secretary shall submit a revised plan to the Secretary within 45 days of receiving notice of rejection. A primary battery stewardship plan that is not approved or rejected by the Secretary within 90 days, not including the time required for public comment under ~~subsection (e) of this section~~ chapter 170 of this title, of submission by a producer shall be deemed approved.

* * *

~~(c) Public notice review. The Secretary shall post all proposed primary battery stewardship plans and all proposed amendments to a primary battery stewardship plan on the Agency's website for 30 days from the date the application for a plan or a plan amendment is deemed complete by the Secretary, subject to the confidentiality provisions of section 7592 of this title. When the Secretary receives a request to approve or amend a primary battery stewardship plan under this subchapter, the Secretary shall proceed in accordance with chapter 170 of this title.~~

~~(d) Public input. The Secretary shall establish a process under which a primary battery stewardship plan, prior to plan approval or amendment, is available for public review and comment. [Repealed.]~~

* * *

Sec. 32. 29 V.S.A. § 405 is amended to read:

§ 405. INVESTIGATION AND DETERMINATION OF PUBLIC GOOD

~~(a) Written notice of each application shall be given by the department to abutting property owners, the selectmen of the town in which the proposed encroachment is located, and other persons as it considers appropriate. The notice shall provide a brief description of the proposed encroachment and the address where complete information about it may be obtained. Notice shall provide not less than 10 days for the filing of written comments by any interested persons. Upon receipt within the notice period of a request from a municipality, or 25 or more persons in interest, the department shall hold a public information meeting. Notice of the meeting shall be provided to anyone required to receive notice by this subsection, to all persons who have filed written comments within the notice period, and to other persons as the department considers appropriate. When an application is filed under this chapter, the Department shall proceed in accordance with 10 V.S.A. chapter 170.~~

* * *

~~(c) The department shall give written notice to the applicant, the municipality in which the encroachment is located, the abutting property owners and other persons considered appropriate, of the action taken in approving a permit or denying the application. Notice shall be given within five days of taking action. The notice shall explain the reasons for the action~~

~~and shall include findings as to the effect of the encroachment on each element of the public good set forth in subsection (b) of this section.~~ The action of approving or denying an application shall not be effective until 10 days after the ~~department's~~ Department's notice of action.

* * * Act 250 Jurisdictional Determinations * * *

Sec. 33. 10 V.S.A. § 6007 is amended to read:

§ 6007. ACT 250 DISCLOSURE STATEMENT; JURISDICTIONAL
DETERMINATION

* * *

(c) With respect to the partition or division of land, or with respect to an activity which might or might not constitute development, any person may submit to the district coordinator an “Act 250 Disclosure Statement” and other information required by the rules of the Board, and may request a jurisdictional opinion from the district coordinator concerning the applicability of this chapter. If a requestor wishes a final determination to be rendered on the question, the district coordinator, at the expense of the requestor and in accordance with rules of the Board, shall publish notice of the issuance of the opinion in a local newspaper generally circulating in the area where the land which is the subject of the opinion is located, and shall serve the opinion on all persons listed in subdivisions 6085(c)(1)(A) through (D) of this title. In addition, the requestor who is seeking a final determination shall consult with the district coordinator and obtain approval of a subdivision 6085(c)(1)(E) list

of persons who shall be notified by the district coordinator because they are adjoining property owners or other persons who would be likely to be able to demonstrate a particularized interest protected by this chapter that may be affected by an act or decision by a District Commission.

~~(d) A person who seeks review of a jurisdictional opinion issued by a district coordinator may request consideration by the Board of the issues addressed in the opinion.~~

~~(1) If the opinion was served on the person when issued, the person's request under this subsection shall be submitted to the Board within 30 days of the opinion's issuance.~~

~~(2) If the opinion was not served on the person when issued, the request shall be submitted to the Board:~~

~~(A) within 30 days from the date on which the opinion was served on the requestor; or~~

~~(B) at any time, if the opinion is never served on the requestor.~~

~~(3) The Board shall give notice of the request.~~

~~(A) The Board shall serve the notice on all persons listed in subdivisions 6085(e)(1)(A)-(D) of this title and post the notice on its website.~~

~~(B) If the request pertains to a jurisdictional opinion for which a final determination was requested under subsection (c) of this section, the Board shall:~~

~~(i) serve the notice on all persons on the approved subdivision
6085(e)(1)(E) list; and~~

~~(ii) publish at the expense of the requestor the notice in a local
newspaper having general circulation in the area where the land which is the
subject of the request is located.~~

~~(4) An act or decision of the Board under this subsection may be
appealed to the Environmental Division pursuant to chapter 220 of this title.~~

[Repealed.]

Sec. 34. 10 V.S.A. § 6089 is amended to read:

§ 6089. APPEALS

Appeals of any act or decision of a District Commission under this chapter
or ~~the Natural Resources Board~~ a district coordinator under subsection ~~6007(d)~~
6007(c) of this title shall be made to the Environmental Division in accordance
with chapter 220 of this title. For the purpose of this section, a decision of the
Chair of a District Commission under section 6001e of this title on whether
action has been taken to circumvent the requirements of this chapter shall be
considered an act or decision of the District Commission.

Sec. 35. 10 V.S.A § 8503(b) is amended to read:

(b) This chapter shall govern:

(1) all appeals from an act or decision of a District Commission under
chapter 151 of this title, excluding appeals of application fee refund requests;

(2) appeals from an act or decision of ~~the Natural Resources Board~~ a district coordinator under subsection ~~6007(d)~~ 6007(c) of this title;

(3) appeals from findings of fact and conclusions of law issued by the Natural Resources Board in its review of a designated growth center for conformance with the criteria of subsection 6086(a) of this title, pursuant to authority granted at 24 V.S.A. § 2793c(f).

Sec. 36. 10 V.S.A. § 8504(a) is amended to read:

(a) Act 250 and Agency appeals. Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the Secretary, ~~the Natural Resources Board~~, or a District Commission, or a district coordinator under the provisions of law listed in section 8503 of this title, or any party by right, may appeal to the Environmental Division, except for an act or decision of the Secretary under subdivision 6086b(3)(E) of this title or governed by section 8506 of this title.

Sec. 37. 10 V.S.A. § 8504(e) is amended to read:

(e) Act 250 jurisdictional determinations by ~~the Natural Resources Board~~ a district coordinator.

(1) The appellant shall provide notice of the filing of an appeal to each person entitled to notice under subdivisions 6085(c)(1)(A) through (D) of this title ~~and~~, to each person on an approved subdivision 6085(c)(1)(E) list, and to the Natural Resources Board.

(2) Failure to appeal within the time required under subsection (a) of this section shall render the decision of the ~~Board~~ district coordinator under subsection ~~6007(d)~~ 6007(c) of this title the final determination regarding jurisdiction under chapter 151 of this title unless the underlying jurisdictional opinion ~~issued by the district coordinator~~ was not properly served on persons listed in subdivisions 6085(c)(1)(A) through (D) of this title and on persons on a subdivision 6085(c)(1)(E) list approved under subsection 6007(c) of this title.

Sec. 37a. 10 V.S.A. § 6604c(d) is amended to read:

(d) On or before July 1, ~~2016~~ 2017, the Secretary shall adopt rules that allow for the management of excavated soils requiring disposal that contain PAHs, arsenic, or lead in a manner that ensures protection of human health and the environment and promotes Vermont's traditional settlement patterns in compact village or city centers. At a minimum, the rules shall:

* * *

Sec. 37b. MANAGEMENT OF EXCAVATED DEVELOPMENT SOILS;

EXTENSION OF REPEAL DATE

2015 Acts and Resolves No. 52, Sec. 7 is amended to read:

Sec. 7. REPEAL

On July 1, ~~2016~~ 2017, 10 V.S.A. § 6604c(a), (b), and (c) are repealed.

* * * Effective Dates * * *

Sec. 38. EFFECTIVE DATES

This act shall take effect on January 1, 2018, except that:

(1) Sec. 4 (bulletin; revision) and this section shall take effect on passage and Secs. 1 (standard procedures) and 3 (environmental notice bulletin) shall apply to the implementation of Sec. 4.

(2) On passage, the Secretary of Natural Resources shall have authority to adopt rules in accordance with Sec. 1.

(3) Secs. 33 through 37 (Act 250 jurisdictional opinions; appeals) shall take effect on passage and shall apply to appeals of jurisdictional opinions issued on or after the effective date of those sections. Notwithstanding the repeal of its authority to consider jurisdictional opinions, the Natural Resources Board shall have authority to complete its consideration of any jurisdictional opinion pending before it as of that effective date, and appeal of the Board's decision shall be governed by the law as it existed immediately prior to that date.

(4) Secs. 37a (rules; management of excavated soils) and 37b (extension of repeal date) shall take effect on passage.

Date Governor signed bill: May 31, 2016